

**SENATE, No. 2313**

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**STATE OF NEW JERSEY**

**220th LEGISLATURE**

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INTRODUCED MARCH 21, 2022

**Sponsored by:**

**Senator NILSA I. CRUZ-PEREZ**

**District 5 (Camden and Gloucester)**

**SYNOPSIS**

Authorizes COAH to credit municipalities with 1.5 units of fair share affordable housing obligation for each housing unit occupied by a veteran; permits municipalities to satisfy fair share affordable housing obligation through 35 percent set aside for veterans.

**CURRENT VERSION OF TEXT**

As introduced.



1 AN ACT concerning municipalities' fair share housing obligation  
2 and amending P.L.1985, c.222.

3  
4 **BE IT ENACTED** by the Senate and General Assembly of the State  
5 of New Jersey:

6  
7 1. Section 7 of P.L.1985, c.222 (C.52:27D-307) is amended to  
8 read as follows:

9 7. It shall be the duty of the council, seven months after the  
10 confirmation of the last member initially appointed to the council,  
11 or January 1, 1986, whichever is earlier, and from time to time  
12 thereafter, to:

13 a. Determine housing regions of the State;

14 b. Estimate the present and prospective need for low and  
15 moderate income housing at the State and regional levels;

16 c. Adopt criteria and guidelines for:

17 (1) Municipal determination of its present and prospective fair  
18 share of the housing need in a given region which shall be  
19 computed for a 10-year period.

20 Municipal fair share shall be determined after crediting on a one-  
21 to-one basis each current unit of low and moderate income housing  
22 of adequate standard, including any such housing constructed or  
23 acquired as part of a housing program specifically intended to  
24 provide housing for low and moderate income households. Notwithstanding any other law to the contrary, a municipality shall  
25 be entitled to a credit for a unit if it demonstrates that (a) the  
26 municipality issued a certificate of occupancy for the unit, which  
27 was either newly constructed or rehabilitated between April 1, 1980  
28 and December 15, 1986; (b) a construction code official certifies,  
29 based upon a visual exterior survey, that the unit is in compliance  
30 with pertinent construction code standards with respect to structural  
31 elements, roofing, siding, doors and windows; (c) the household  
32 occupying the unit certifies in writing, under penalty of perjury, that  
33 it receives no greater income than that established pursuant to  
34 section 4 of P.L.1985, c.222 (C.52:27D-304) to qualify for  
35 moderate income housing; and (d) the unit for which credit is  
36 sought is affordable to low and moderate income households under  
37 the standards established by the council at the time of filing of the  
38 petition for substantive certification. It shall be sufficient if the  
39 certification required in subparagraph (c) is signed by one member  
40 of the household. A certification submitted pursuant to this  
41 paragraph shall be reviewable only by the council or its staff and  
42 shall not be a public record;

43  
44 Nothing in P.L.1995, c.81 shall affect the validity of substantive  
45 certification granted by the council prior to November 21, 1994, or

**EXPLANATION** – Matter enclosed in bold-faced brackets **[thus]** in the above bill is  
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 of a judgment of compliance entered by any court of competent  
2 jurisdiction prior to that date. Additionally, any municipality that  
3 received substantive certification or a judgment of compliance prior  
4 to November 21, 1994 and filed a motion prior to November 21,  
5 1994 to amend substantive certification or a judgment of  
6 compliance for the purpose of obtaining credits, shall be entitled to  
7 a determination of its right to credits pursuant to the standards  
8 established by the Legislature prior to P.L.1995, c.81. Any  
9 municipality that filed a motion prior to November 21, 1994 for the  
10 purpose of obtaining credits, which motion was supported by the  
11 results of a completed survey performed pursuant to council rules,  
12 shall be entitled to a determination of its right to credits pursuant to  
13 the standards established by the Legislature prior to P.L.1995, c.81;

14 (2) Municipal adjustment of the present and prospective fair  
15 share based upon available vacant and developable land,  
16 infrastructure considerations or environmental or historic  
17 preservation factors and adjustments shall be made whenever:

18 (a) The preservation of historically or important architecture and  
19 sites and their environs or environmentally sensitive lands may be  
20 jeopardized,

21 (b) The established pattern of development in the community  
22 would be drastically altered,

23 (c) Adequate land for recreational, conservation or agricultural  
24 and farmland preservation purposes would not be provided,

25 (d) Adequate open space would not be provided,

26 (e) The pattern of development is contrary to the planning  
27 designations in the State Development and Redevelopment Plan  
28 prepared pursuant to sections 1 through 12 of P.L.1985, c.398  
29 (C.52:18A-196 et seq.),

30 (f) Vacant and developable land is not available in the  
31 municipality, and

32 (g) Adequate public facilities and infrastructure capacities are  
33 not available, or would result in costs prohibitive to the public if  
34 provided.

35 (3) (Deleted by amendment, P.L.1993, c.31).

36 d. Provide population and household projections for the State  
37 and housing regions;

38 e. In its discretion, place a limit, based on a percentage of  
39 existing housing stock in a municipality and any other criteria  
40 including employment opportunities which the council deems  
41 appropriate, upon the aggregate number of units which may be  
42 allocated to a municipality as its fair share of the region's present  
43 and prospective need for low and moderate income housing. No  
44 municipality shall be required to address a fair share of housing  
45 units affordable to households with a gross household income of  
46 less than 80% of the median gross household income beyond 1,000  
47 units within ten years from the grant of substantive certification,  
48 unless it is demonstrated, following objection by an interested party  
49 and an evidentiary hearing, based upon the facts and circumstances

1 of the affected municipality that it is likely that the municipality  
2 through its zoning powers could create a realistic opportunity for  
3 more than 1,000 low and moderate income units within that ten-  
4 year period. For the purposes of this section, the facts and  
5 circumstances which shall determine whether a municipality's fair  
6 share shall exceed 1,000 units, as provided above, shall be a finding  
7 that the municipality has issued more than 5,000 certificates of  
8 occupancy for residential units in the ten-year period preceding the  
9 petition for substantive certification in connection with which the  
10 objection was filed.

11 For the purpose of crediting low and moderate income housing  
12 units in order to arrive at a determination of present and prospective  
13 fair share, as set forth in paragraph (1) of subsection c. of this  
14 section, housing units comprised in a community residence for the  
15 developmentally disabled, as defined in section 2 of P.L.1977,  
16 c.448 (C.30:11B-2), shall be fully credited pursuant to rules  
17 promulgated or to be promulgated by the council, to the extent that  
18 the units are affordable to persons of low and moderate income and  
19 are available to the general public.

20 Notwithstanding any law, rule, or regulation to the contrary, for  
21 purposes of crediting units of housing against a municipality's fair  
22 share, the council shall permit a municipality to satisfy one and one-  
23 half unit of its fair share obligations by each unit of housing  
24 occupied or reserved for occupancy by a low or moderate income  
25 veteran with active service in time of war as defined by section 1 of  
26 P.L.1963, c.171 (C.54:4-8.10).

27 The council, with respect to any municipality seeking substantive  
28 certification, shall require that a minimum percentage of housing  
29 units in any residential development resulting from a zoning change  
30 made to a previously non-residentially-zoned property, where the  
31 change in zoning precedes or follows the application for residential  
32 development by no more than 24 months, be reserved for occupancy  
33 by low or moderate income households, which percentage shall be  
34 determined by the council based on economic feasibility with  
35 consideration for the proposed density of development.

36 In carrying out the above duties, including, but not limited to,  
37 present and prospective need estimations the council shall give  
38 appropriate weight to pertinent research studies, government  
39 reports, decisions of other branches of government, implementation  
40 of the State Development and Redevelopment Plan prepared  
41 pursuant to sections 1 through 12 of P.L.1985, c.398 (C.52:18A-196  
42 et seq.) and public comment. To assist the council, the State  
43 Planning Commission established under that act shall provide the  
44 council annually with economic growth, development and decline  
45 projections for each housing region for the next ten years. The  
46 council shall develop procedures for periodically adjusting regional  
47 need based upon the low and moderate income housing that is  
48 provided in the region through any federal, State, municipal or  
49 private housing program.

1 No housing unit subject to the provisions of section 5 of  
2 P.L.2005, c.350 (C.52:27D-123.15) and to the provisions of the  
3 barrier free subcode adopted by the Commissioner of Community  
4 Affairs pursuant to the "State Uniform Construction Code Act,"  
5 P.L.1975, c.217 (C.52:27D-119 et seq.) shall be eligible for  
6 inclusion in the municipal fair share plan certified by the council  
7 unless the unit complies with the requirements set forth thereunder.  
8 (cf: P.L.2008, c.46, s.6)

9  
10 2. Section 11 of P.L.1985, c.222 (C.52:27D-311) is amended to  
11 read as follows:

12 11. a. In adopting its housing element, the municipality may  
13 provide for its fair share of low and moderate income housing by  
14 means of any technique or combination of techniques which provide  
15 a realistic opportunity for the provision of the fair share. The  
16 housing element shall contain an analysis demonstrating that it will  
17 provide such a realistic opportunity, and the municipality shall  
18 establish that its land use and other relevant ordinances have been  
19 revised to incorporate the provisions for low and moderate income  
20 housing. In preparing the housing element, the municipality shall  
21 consider the following techniques for providing low and moderate  
22 income housing within the municipality, as well as such other  
23 techniques as may be published by the council or proposed by the  
24 municipality:

25 (1) Rezoning for densities necessary to assure the economic  
26 viability of any inclusionary developments, either through  
27 mandatory set-asides or density bonuses, as may be necessary to  
28 meet all or part of the municipality's fair share in accordance with  
29 the regulations of the council and the provisions of subsection h. of  
30 this section;

31 (2) Determination of the total residential zoning necessary to  
32 assure that the municipality's fair share is achieved;

33 (3) Determination of measures that the municipality will take to  
34 assure that low and moderate income units remain affordable to low  
35 and moderate income households for an appropriate period of not  
36 less than six years;

37 (4) A plan for infrastructure expansion and rehabilitation if  
38 necessary to assure the achievement of the municipality's fair share  
39 of low and moderate income housing;

40 (5) Donation or use of municipally owned land or land  
41 condemned by the municipality for purposes of providing low and  
42 moderate income housing;

43 (6) Tax abatements for purposes of providing low and moderate  
44 income housing;

45 (7) Utilization of funds obtained from any State or federal  
46 subsidy toward the construction of low and moderate income  
47 housing;

48 (8) Utilization of municipally generated funds toward the  
49 construction of low and moderate income housing; and

1 (9) The purchase of privately owned real property used for  
2 residential purposes at the value of all liens secured by the property,  
3 excluding any tax liens, notwithstanding that the total amount of  
4 debt secured by liens exceeds the appraised value of the property,  
5 pursuant to regulations promulgated by the Commissioner of  
6 Community Affairs pursuant to subsection b. of section 41 of  
7 P.L.2000, c.126 (C.52:27D-311.2).

8 b. The municipality may provide for a phasing schedule for the  
9 achievement of its fair share of low and moderate income housing.

10 c. (Deleted by amendment, P.L.2008, c.46)

11 d. Nothing in P.L.1985, c.222 (C.52:27D-301 et al.) shall  
12 require a municipality to raise or expend municipal revenues in  
13 order to provide low and moderate income housing.

14 e. When a municipality's housing element includes the  
15 provision of rental housing units in a community residence for the  
16 developmentally disabled, as defined in section 2 of P.L.1977,  
17 c.448 (C.30:11B-2), which will be affordable to persons of low and  
18 moderate income, and for which adequate measures to retain such  
19 affordability pursuant to paragraph (3) of subsection a. of this  
20 section are included in the housing element, those housing units  
21 shall be fully credited as permitted under the rules of the council  
22 towards the fulfillment of the municipality's fair share of low and  
23 moderate income housing.

24 f. It having been determined by the Legislature that the  
25 provision of housing under P.L.1985, c.222 (C.52:27D-301 et al.) is  
26 a public purpose, a municipality or municipalities may utilize public  
27 monies to make donations, grants or loans of public funds for the  
28 rehabilitation of deficient housing units and the provision of new or  
29 substantially rehabilitated housing for low and moderate income  
30 persons, providing that any private advantage is incidental.

31 g. A municipality which has received substantive certification  
32 from the council, and which has actually effected the construction  
33 of the affordable housing units it is obligated to provide, may  
34 amend its affordable housing element or zoning ordinances without  
35 the approval of the council.

36 h. Whenever affordable housing units are proposed to be  
37 provided through an inclusionary development, a municipality shall  
38 provide, through its zoning powers, incentives to the developer,  
39 which shall include increased densities and reduced costs, in  
40 accordance with the regulations of the council and this subsection.

41 i. The council, upon the application of a municipality and a  
42 developer, may approve reduced affordable housing set-asides or  
43 increased densities to ensure the economic feasibility of an  
44 inclusionary development.

45 j. A municipality may enter into an agreement with a  
46 developer or residential development owner to provide a preference  
47 for affordable housing to low to moderate income veterans who  
48 served in time of war or other emergency, as defined in section 1 of  
49 P.L.1963, c.171 (C.54:4-8.10), of up to 50 percent of the affordable

1 units in that particular project. This preference shall be established  
2 in the applicant selection process for available affordable units so  
3 that applicants who are veterans who served in time of war or other  
4 emergency, as referenced in this subsection, and who apply within  
5 90 days of the initial marketing period shall receive preference for  
6 the rental of the agreed-upon percentage of affordable units. After  
7 the first 90 days of the initial 120-day marketing period, if any of  
8 those units subject to the preference remain available, then  
9 applicants from the general public shall be considered for  
10 occupancy. Following the initial 120-day marketing period,  
11 previously qualified applicants and future qualified applicants who  
12 are veterans who served in time of war or other emergency, as  
13 referenced in this subsection, shall be placed on a special waiting  
14 list as well as the general waiting list. The veterans on the special  
15 waiting list shall be given preference for affordable units, as the  
16 units become available, whenever the percentage of preference-  
17 occupied units falls below the agreed upon percentage. Any  
18 agreement to provide affordable housing preferences for veterans  
19 pursuant to this subsection shall not affect a municipality's ability to  
20 receive credit for the unit from the council, or its successor.

21 k. A municipality may prepare and file a housing element that  
22 provides that 35 percent of all new affordable housing shall be set  
23 aside for low or moderate income veterans with active service in  
24 time of war as defined by section 1 of P.L.1963, c.171 (C.54:4-  
25 8.10).

26 (cf: P.L.2013, c.6, s.1)

27  
28 3. This act shall take effect immediately.

29

30

31

## STATEMENT

32

33 This bill would allow municipalities to obtain credits toward the  
34 fulfillment of their fair share affordable housing obligations for  
35 housing reserved for certain veterans. This bill would require the  
36 Council on Affordable Housing to credit 1.5 units toward a  
37 municipality's fair share obligation for each unit of housing  
38 occupied by a veteran of low or moderate income.

39 This legislation also permits a municipality to submit a housing  
40 element to the Council on Affordable Housing that sets aside 35  
41 percent of all new affordable housing for low and moderate income  
42 veterans who had active service in time of war, as defined by  
43 current law.